

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CANDICE JENE CECILIA BERRETH,

Petitioner,

v.

JENKINS, Warden,

Respondent.

Case No. 17-07324 EJD (PR)

**ORDER TO SHOW CAUSE**

Petitioner, a federal prisoner at the Federal Prison Camp in Dublin, California, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner has paid the filing fee.

**DISCUSSION**

**A. Standard of Review**

This court may entertain a petition for writ of habeas corpus from a person “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). The court shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243. Summary

1 dismissal is appropriate only where the allegations in the petition are vague or conclusory,  
2 palpably incredible, or patently frivolous or false. See Hendricks v. Vasquez, 908 F.2d  
3 490, 491 (9th Cir. 1990).

4 **B. Legal Claims**

5 Petitioner claims that she was found ineligible for “3621e” due to her “current  
6 offense presenting a potential risk of physical force against another.” (Pet. at 2.) Federal  
7 prisoners may be eligible for earlier release under 18 U.S.C. § 3621(e) for successful  
8 completion of the Residential Drug Abuse Program (“RDAP”). Petitioner challenges the  
9 denial of early release based on the following grounds: (1) she is a nonviolent offender; (2)  
10 current offense was ignored and there was reliance on sentencing enhancements; and (3)  
11 she successfully completed RDAP. (Pet. at 7-9.) Liberally construed, these claims are  
12 cognizable and merit an answer from Respondent.

13  
14 **CONCLUSION**

15 For the foregoing reasons and for good cause shown,

16 1. The Clerk shall serve by mail a copy of this order and the petition and all  
17 attachments thereto on Respondent and Respondent’s attorney, the Attorney General of the  
18 State of California. The Clerk also shall serve a copy of this order on Petitioner.

19 2. Respondent shall file with the court and serve on Petitioner, within **sixty (60)**  
20 **days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the  
21 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should  
22 not be issued. Respondent shall file with the answer and serve on Petitioner a copy of all  
23 portions of the state trial record that have been transcribed previously and that are relevant  
24 to a determination of the issues presented by the petition.

25 If Petitioner wishes to respond to the answer, he shall do so by filing a traverse with  
26 the Court and serving it on Respondent within **thirty (30) days** of his receipt of the  
27 answer.

3. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court and serve on Respondent an opposition or statement of non-opposition within **twenty-eight (28) days** of receipt of the motion, and Respondent shall file with the court and serve on Petitioner a reply within **fourteen (14) days** of receipt of any opposition.

4. It is Petitioner's responsibility to prosecute this case. Petitioner is reminded that all communications with the Court must be served on Respondent by mailing a true copy of the document to Respondent's counsel. Petitioner must keep the Court and all parties informed of any change of address by filing a separate paper captioned "Notice of Change of Address." He must comply with the Court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

5. Upon a showing of good cause, requests for a reasonable extension of time will be granted provided they are filed on or before the deadline they seek to extend.

**IT IS SO ORDERED.**

**Dated:** 4/16/2018



EDWARD J. DAVILA  
United States District Judge